IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 813 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VAJUBHA DHIRUBHA JADAV
Versus
STATE OF GUJARAT & ANR.

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Appearance :
MS TRUSHA H MEHTA for Applicant
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent No.1
MR BY MANKAD for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the applicant – original accused has prayed for an appropriate Writ, direction

and order quashing and setting aside the order dated 06.10.2006 passed by the Judicial Magistrate First Class (J.M.F.C.), Gandhidham, Kutch in Criminal Case No. 2040 of 2006 by passing an order of handing over *Muddamal* – vehicle to respondent No.2 herein and also the order dated 30.03.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.3, Gandhidham in Criminal Revision Application No. 63 of 2006 in dismissing the said Revision Application.

2. That respondent No.2 herein has filed/lodged FIR being C.R.No.I – 73 of 2006 before Adipur Police Station against the petitioner for the offences punishable under Sections 406 and 420 of Indian Penal Code with respect to the vehicle in question being No.GJ-10-A-781. During the investigation of the said FIR, Police has arrested the petitioner and seized the vehicle in question bearing registration No. GJ-10-A-781. That respondent No.2 preferred application under Section 451 of the Criminal Procedure Code for custody of Tata Sumo Car bearing registration No.GJ-10-A-781 contending *inter-alia* that he has purchased the said vehicle from the petitioner by making payment of Rs.45,000/- in the year 2004 i.e. on

18.08.2004 for sale consideration of Rs.1,65,000/- and balance amount was to be paid by the original complainant to the Finance Company directly and; that installments after 18.08.2004 has been paid by him and has paid the entire amount and even 'No Due Certificate' has been issued by the Finance Company and therefore, it is requested to hand over the possession of *Muddamal* vehicle to him on proper suitable conditions. The said application was objected by the petitioner on the ground that he is registered owner of the vehicle in question and therefore, possession of *Muddamal*-vehicle may not be given to respondent No.2 and same may be released in favour of the petitioner.

3. After considering the rival submissions and considering the fact that the petitioner has sold the vehicle to respondent No.2 and has got Rs.45,000/- by cheque and thereafter, subsequent installments have been paid by respondent No.2 directly to the Finance Company, against which the Finance Company has issued 'No Due Certificate', learned J.M.F.C., Gandhidham passed an order dated 06.10.2006 directing to hand over *Muddamal* vehicle to respondent No.2 on

conditions; that till final disposal of Criminal Proceedings he shall not transfer and/or alienate in any manner whatsoever the vehicle in question; as and when ordered by the Court he shall produce the *Muddamal*-vehicle; necessary entry be made in the RTO and certified copy of RC Book be produced in the Court as well as in the concerned Police Station. Being aggrieved and dissatisfied with the order dated 06.10.2006 passed by the learned J.M.F.C., the petitioner preferred Criminal Revision Application No. 63 of 2006 before the learned Additional Sessions Judge, Kutch, who *vide* judgment and order dated 30.03.2007 has been pleased to dismiss the said Revision Application and confirmed the order passed by the learned J.M.F.C., Gandhidham in handing over the *Muddamal* – vehicle in favour of respondent No.2. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

4. Ms.Trusha Mehta, learned Advocate appearing on behalf of the petitioner has vehemently submitted that as the petitioner is registered owner of vehicle

in question, both the Courts' below have materially erred in directing to hand over *Muddamal*-vehicle to respondent No.2. She has submitted that normally *Muddamal*-vehicle is handed over to the registered owner. She has also shown two receipts showing payment of installments to the Finance Company and relying upon the same, it is requested to allow the present petition and requested to quash and set aside the orders passed by the Courts' below and requested to hand over *Muddamal* vehicle to the petitioner.

5. On the other hand, Mr.Mankad, learned Advocate appearing on behalf of respondent No.2-original applicant has submitted that considering the fact that Rs.45,000/- was paid to the petitioner by way of cheque and rest of the amount of sale consideration has been paid by respondent No.2 – original applicant to the Finance Company towards installments as per the agreement between the petitioner and respondent No.2 and considering the same when both the Courts' below have exercised discretion in favour of respondent No.2 – original applicant and has directed to hand over possession of *Muddamal*- vehicle to him, same is not required to be

interfered with by this Court in exercise of powers under Article 227 of the Constitution of India, more particularly when there is no illegality committed by any of the Courts' below. It is submitted that there are no hard and fast rules that the *Muddamal*- vehicle is required to be handed over only to the registered owner. Therefore, it is requested to dismiss the present petition.

6. Mr.M.R.Mengdey, learned Additional Public Prosecutor has requested to pass an appropriate order by submitting that both the Courts' below have rightly passed an order to hand over the possession of *Muddamal*- vehicle to respondent No.2 – original applicant.

7. Heard the learned Advocates appearing on behalf of the respective parties.

8. At the outset it is required to be noted that this petition is filed under Article 227 of the Constitution of India. Both the Courts' below have specifically come to the conclusion on appreciation of evidence and considering the record that vehicle

in question has been sold by the petitioner to respondent No.2 for which he has paid Rs.45,000/- by way of cheque and balance amount towards sale consideration has been paid by respondent No.2 directly to the Finance Company towards installments and; that even Finance Company has also issued 'No Due Certificate'. Thus after August 2004 installments are paid by respondent no.2 and the receipts shown by the learned Advocate appearing on behalf of the petitioner with regard to payment to the Finance Company are prior to August 2004 i.e. prior to transaction between the petitioner and respondent No.2, same will not be helpful to the petitioner.

9. Now considering the fact that the petitioner has sold the vehicle in question to respondent No.2 in the month of August 2004 and he has received Rs.45,000/- by way of cheque and balance amount of sale consideration has been paid by respondent No.2 – original applicant to the Finance Company by way of installments and; that entire amount has been paid by respondent No.2 – original applicant and considering the same when both the Courts' below have passed an order directing to hand over possession of *Muddamal*-

vehicle to respondent No.2 on conditions which are referred herein above, it cannot be said that both the Courts' below have committed any error and/or any illegality. There is no hard and fast rules that possession of *Muddamal* – vehicle is required to be handed over to registered owner of vehicle only. In the facts and circumstances of the case, both the Courts' below have not committed any error in handing over possession of *Muddamal* – vehicle to respondent No.2. No case is made out to interfere with the orders passed by the Courts' below in exercise of powers under Article 227 of the Constitution of India. There is no jurisdictional error much less than law committed by any of the Courts' below.

10. For the reasons stated above there is no substance in the present petition, requires to be dismissed and accordingly it is dismissed. Notice discharged.

[M.R.Shah, J.]

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